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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,294	06/07/2001	Stefan Fietkau	31512-172404 RK	4659
26694	7590	08/05/2005	EXAMINER	
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20045-9998			SIPOS, JOHN	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/875,294	<b>Applicant(s)</b> FIETKAU, STEFAN	
	<b>Examiner</b> John Sipos	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 4-8, 10-12, 14-18, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-8, 10-12, 14-18, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

In view of the Appeal Brief filed on June 14, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

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### ***MISCELLANEOUS***

The disclosure discusses the feeding of the web at variable speed; however it is not clear how this step is performed. What part of the structure of Figure 1 performs the variable feeding of the web? Clarification is requested.

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### ***REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS***

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 4-8,10-12,14-18,24 and 25** are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25 is indefinite in that

the step of directing the flowable substance at the web is not associated with the steps of confining and advancing the web in the predetermined path. The claim may even be read on a process where the flowable substance directing step takes place in a different machine from the confining and advancing steps.

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***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

**Claims 25,4-8,17,18 and 24** are rejected under **35 U.S.C. ' 102(e)** as being anticipated by the patent to Hidaka (6,311,899). The patent to Hidaka shows a method of applying a flowable substance to a web of material, comprising the steps of:

confining the web to movement along a predetermined path;

directing at least one stream of flowable substance in an at least partially non-linear manner toward one side of the web, wherein said directing step includes the utilization of a nozzle A having a cone 2 and an orifice 21 which discharges the at least one stream of flowable substance, and includes rotating the stream, wherein said

rotating step includes directing against the stream at least one flow of a fluid substance through passages 12; and

advancing the web lengthwise along said path at a variable speed.

The confining and variable speed advancing steps of the web are read on the discussion of Hidaka of the various patterns of the adhesive achieved by changing the speed of the film to which the adhesive is applied in column 5, line 41 et seq; column 6, lines 65-68; column 7, line 8; and column 7, line 22.

The use of the web material for rod-shaped products as recited in line 2 of claim 25 is merely the intended use of the web that may or may not take place and no weight is given to this future use.

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The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**Claims 10-12 and 14-16** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Hidaka (6,311,899) in view of Pollentzke (5,226,432). The patent to Hidaka lacks the control of the adhesive as a function of the web speed. It would have been obvious to one skilled in the art to control the discharge of the adhesive of Hidaka as a function of the speed of the web to apply optimal quantities of adhesive to the web.

Regarding claims 10-12, the use of nozzles to apply adhesives inherently requires the presence of some pressure. While the orifice/valve of the nozzle is closed the adhesive has to be maintained under pressure so that upon opening of the orifice it will be discharged. Note the use of an adhesive pump 38 in the applicator of Pollentzke.

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***ADDITIONAL REFERENCES CITED***

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to Miller, Sprague and Ziecker show adhesive spray guns that apply adhesive under pressure in spiral patterns.

The patents to Focke, Palmer, Siems, Arthur and Hausler show the application of a material (adhesive or plasticizer) at a rate that is a function of the speed of the material to which the material is applied.

The rest of the cited patents show rod forming machines with adhesive applicators.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.


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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

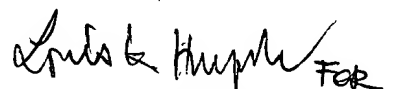
Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300**.

  
**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

js

  
**Rada Rinaldi, SPE**  
**Art Unit 3721**